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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PAUL ENGEL, on behalf of himself and others  
similarly situated,

No. C 07 0117 CW

Plaintiff,

**STIPULATION AND ORDER TO (1)  
CORRECT SUBCLASS B DESIGNATION,  
AND (2) CLARIFY PAYMENT  
MECHANISM IN STIPULATION OF  
SETTLEMENT AND IN FINAL  
APPROVAL ORDER**

vs.  
EMD SERONO, INC.,

Defendant.

It is hereby stipulated by and between Plaintiff Paul Engel and the Class he represents, and  
Defendant EMD Serono, Inc., by and through their counsel of record, and subject to the approval of  
this Court, that:

WHEREAS the Court granted final approval of the parties' Stipulation of Settlement and  
Release ("Stipulation of Settlement") by its May 8, 2008 Order: (1) Finally Approving Class Action

1 Settlement And Plan Of Distribution; (2) Entering Final Judgment; (3) Approving Service Payment  
2 To Named Plaintiff Paul Engel; (4) Approving The Payment Of Reasonable Costs Of Administration;  
3 And (5) Reserving Jurisdiction (the “Final Approval Order”);

4 WHEREAS the Final Approval Order, paragraph 14, reserved to the Court continuing  
5 jurisdiction over the settlement administration in this action;

6 WHEREAS during the course of the settlement administration the parties have noted the need  
7 to (1) add one person to Subclass B, and (2) also clarify the payment mechanism in paragraphs 2 and  
8 3 of the Stipulation of Settlement and Release to improve efficiency and conform to more common  
9 settlement administration practice in the manner originally contemplated by the Settlement  
10 Administrator;

11 WHEREAS Mr. Phineas Leevy was and is employed by EMD Serono as a Key Account  
12 Manager (“KAM”) and was eligible to be a member of the Class in this action;

13 WHEREAS Mr. Leevy was employed by EMD Serono as a KAM outside California before  
14 April 16, 2007 and thereafter employed by it as a KAM resident in California;

15 WHEREAS Mr. Leevy was mailed the Notice Of Collective Action Lawsuit (“Class Notice”)  
16 to his current California address, but Mr. Leevy did not opt-in and did not become a member of  
17 Subclass A (the “FLSA Collective Action Class”);

18 WHEREAS the Stipulation of Settlement contained a list of members of Subclass B (the  
19 “California Class”) that did not include Mr. Leevy;

20 WHEREAS Subclass B is an opt-out class pursuant to Rule 23, F.R.Civ.P.;

21 WHEREAS following the entry of the Final Approval Order the parties recently discovered  
22 that through clerical oversight Mr. Leevy was not included on the list of members of Subclass B;

23 WHEREAS, with the consent of Class Counsel, Mr. Leevy has had the facts stated above  
24 explained to him by the in-house counsel for EMD Serono orally and in writing; has received the  
25 Notice Of Class Action And Collective Action Settlement And Release (“Notice of Settlement”); has  
26 had the opportunity to consult with Class Counsel; and has informed counsel for the parties in writing  
27 (attached hereto as Exhibit A) that he wishes to receive the benefits of the Settlement and does not  
28 wish to opt-out of the Class nor object to the Settlement;

1        WHEREAS the parties agree that Mr. Leevy should be included within Subclass B in the  
2 Stipulation of Settlement and receive the benefits of the Settlement;

3        WHEREAS the parties have agreed that, subject to the approval of this Court, EMD Serono  
4 will add to the \$1,700,000.00 Settlement Payment the sum of \$8,622.19 and that, pursuant to the  
5 formula stated in the Stipulation of Settlement, Mr. Leevy's share of the new total Settlement  
6 Payment of \$1,708,622.19 is \$8,622.19, such that Mr. Leevy receives his allocable share of the  
7 Settlement and no other Class member's share is reduced;

8        WHEREAS EMD Serono shall bear any additional settlement administration costs, if any, of  
9 the recalculation stated above;

10       NOW, THEREFORE, IT IS HEREBY STIPULATED, subject to the approval of the Court,  
11 that:

12       1. Mr. Phineas Leevy shall be included within Subclass B in the Stipulation of Settlement and  
13 receive the benefits of the Settlement; and

14       2. EMD Serono shall add to the \$1,700,000.00 Settlement Payment the sum of \$8,622.19, for  
15 a new total Settlement Payment of \$1,708,622.19; and, pursuant to the formula stated in the  
16 Stipulation of Settlement, Mr. Leevy's share of the total Settlement Payment of \$1,708,622.19 is  
17 \$8,622.19; and

18       3. EMD Serono shall bear any additional settlement administration costs, if any, of the  
19 recalculation stated above; and

20       4. Mr. Phineas Leevy shall be made a member of Subclass B subject to all the terms and  
21 conditions of the Stipulation of Settlement and the Final Approval Order.

22       5. In order to provide for the Settlement Administrator rather than EMD Serono to make all  
23 required tax withholding payments to governmental authorities from the Net Settlement Fund (which  
24 payments are already agreed to be deducted from the Net Settlement Fund), Paragraphs 2 and 3 of the  
25 Stipulation of Settlement and Release shall be revised as follows:

26       In Paragraph 2, at pages 9-10, sixth bulleted subparagraph: delete existing text and replace  
27 with "Within twenty (20) days following the Court's entry of the [Proposed] Order to (1) Correct  
28 Subclass B Designation and (2) Clarify Payment Mechanism In Stipulation Of Settlement And Final

1 Approval Order, EMD Serono shall pay the Settlement Payment to the Settlement Administrator in  
2 immediately available funds.”

3 In Paragraph 2, at page 10, seventh bulleted subparagraph, fifth line: following “Class  
4 members” insert “, and shall pay to the appropriate governmental entities the employee’s and  
5 employer’s share of any required payroll withholding payments”.

6 In paragraph 3 at page 11, delete the third sentence (beginning “EMD Serono” and ending  
7 “Settlement Payment.”).

8 DATED: July 16, 2008

NIXON PEABODY LLP

10 By: /s/  
11 Paul J. Hall

12 Attorneys for Defendant  
13 EMD SERONO, INC.

14 DATED: July \_\_\_, 2008

RUDY AXELROD & ZIEFF, LLP

16 By: /s/  
17 David A. Lowe

18 Attorneys for Plaintiff  
19 PAUL ENGEL and the Class he represents

## ORDER

Based upon the foregoing Stipulation of the Parties, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Mr. Phineas Leevy shall be included within Subclass B in the Stipulation of Settlement and receive the benefits of the Settlement; and

2. EMD Serono shall add to the \$1,700,000.00 Settlement Payment the sum of \$8,622.19, for a new total Settlement Payment of \$1,708,622.19; and, pursuant to the formula stated in the Stipulation of Settlement, Mr. Leevy's share of the total Settlement Payment of \$1,708,622.19 is \$8,622.19; and

3. EMD Serono shall bear any additional settlement administration costs, if any, of the recalculation stated above; and

4. Mr. Phineas Leevy shall be and hereby is made a member of Subclass B subject to all the terms and conditions of the Stipulation of Settlement and the Final Approval Order.

5. In order to provide for the Settlement Administrator rather than EMD Serono to make all required tax withholding payments to governmental authorities from the Net Settlement Fund (which payments are already agreed to be deducted from the Net Settlement Fund), Paragraphs 2 and 3 of the Stipulation of Settlement and Release shall be revised as follows:

In Paragraph 2, at pages 9-10, sixth bulleted subparagraph: delete existing text and replace with “Within twenty (20) days following the Court’s entry of the [Proposed] Order to (1) Correct Subclass B Designation and (2) Clarify Payment Mechanism In Stipulation Of Settlement And Final Approval Order, EMD Serono shall pay the Settlement Payment to the Settlement Administrator in immediately available funds.”

In Paragraph 2, at page 10, seventh bulleted subparagraph, fifth line: following “Class members” insert “, and shall pay to the appropriate governmental entities the employee’s and employer’s share of any required payroll withholding payments”.

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2 In paragraph 3 at page 11, delete the third sentence (beginning "EMD Serono" and ending  
3 "Settlement Payment.").

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5 **7/30/08**  
6 Dated: \_\_\_\_\_



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11 Honorable Claudia Wilken  
12 United States District Judge  
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